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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Winnebago County.
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	Nos. 12-CF-66
	)	12-DT-24
	)	12-TR-589
	)	12-TR-590
	)	12-TR-592
	)	12-TR-596
	)	
CEDRIC L. JOHNSON,	)	Honorable
	)	Fernando L. Engelsma,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Justices Birkett and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court properly granted defendant's motion to suppress: the impoundment of the searched vehicle was not supported by probable cause or a community-caretaking justification and thus was improper regardless of whether the officer complied with his department's inventory policy.

¶ 2 The State appeals from an order of the circuit court of Winnebago County granting defendant Cedric L. Johnson's motion to suppress evidence seized during an inventory search of the vehicle he had been driving when stopped by the police. Because there was no valid basis

for impounding the vehicle, and therefore the subsequent inventory search was unlawful, we affirm.

¶ 3

### I. BACKGROUND

¶ 4 The following facts are taken from the evidence introduced at the hearing on defendant's motion to suppress, including the DVD recording of the traffic stop. On the evening of January 5, 2012, Deputy Tim Coomer of the Winnebago County sheriff's office was sitting in his parked squad car at the intersection of Pierpont Avenue and Preston Street in Rockford. Coomer observed a vehicle traveling south on Pierpont Avenue at a high rate of speed. Because radar verified that the vehicle was speeding, Coomer decided to stop the vehicle.

¶ 5 As Coomer followed the vehicle, it turned onto Preston Street. When he activated his emergency lights, the vehicle turned onto Horace Street, pulled over, and parked next to the curb.

¶ 6 The section of Horace Street where the vehicle stopped was residential, and there were streetlights in the area. The vehicle parked just beyond a private driveway. It was a location in which the vehicle could be parked legally overnight. The vehicle did not impede the flow of traffic or create any other apparent hazard. During the course of the traffic stop, another vehicle entered and exited the driveway.

¶ 7 Coomer approached the vehicle and discovered that defendant was the driver and sole occupant. Upon further investigation, he arrested defendant for speeding (625 ILCS 5/11-601(b) (West 2012)), failure to wear a seatbelt (625 ILCS 5/12-603.1 (West 2012)), driving while under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(1), (a)(2) (West 2012)), and driving with a suspended driver's license (625 ILCS 5/6-303 (West 2012)).

¶ 8 Coomer learned that the vehicle was owned by defendant's girlfriend, who lived in Freeport. Defendant asked Coomer not to tow the vehicle and instead to call his girlfriend about

the vehicle. However, Coomer requested that a tow truck be sent to tow the vehicle. He did not call defendant's girlfriend until after the vehicle had been towed. He explained that the practice for the sheriff's office is to contact the owner of a towed vehicle and report where the vehicle has been towed. Such contact might be made before or after the tow, depending on the particular circumstances of the investigation.

¶ 9 Before the vehicle was towed, another deputy at the scene conducted an inventory search of the vehicle. In doing so, he found an open container of alcohol and a loaded handgun under the front passenger seat.

¶ 10 Based on the discovery of the loaded handgun, defendant was indicted on one count of unlawful possession of a weapon by a felon based on the handgun (720 ILCS 5/24-1.1(a) (West 2012)), one count of unlawful possession of a weapon by a felon based on the ammunition (720 ILCS 5/24-1.1(a) (West 2012)), one count of aggravated unlawful use of a weapon based on the lack of a firearm owner's identification card (FOID card) (720 ILCS 5/24-1.6(a)(1)(3)(C) (West 2012)), and one count of possession of a firearm without a FOID card (430 ILCS 65/2 (West 2012)).

¶ 11 According to Coomer, he had the vehicle towed pursuant to a written inventory policy of the sheriff's office. He elaborated that the inventory policy required an officer to tow a vehicle if the driver had been arrested for DUI or for driving with a suspended or revoked license. He identified section VI(A) of the inventory policy as requiring the tow. See Winnebago County Sheriff's Department Standard Operating Procedures § VI(A) (eff. Oct. 20, 1993) (hereinafter Inventory Policy § VI(A)).

¶ 12 The inventory policy was introduced into evidence. It included, in its "definitions" section, the term "arrest tow." Inventory Policy § III(D). That term was defined as "[t]he towing

of a vehicle belonging to or used by a lawfully arrested subject when conditions exist that prohibit the custodial transfer of the vehicle to a lawfully eligible person at the scene or the safe legal relocation of the vehicle from the scene.” Inventory Policy § III(D). In the “general provisions” section, subsection D provided that “[d]eputies may be required to tow vehicles where the owner/operator is not present.” Inventory Policy § IV(D). Additionally, section VI(A) provided that “[a]n inventory will be conducted only under [certain listed circumstances].” Inventory Policy § VI(A). Those circumstances were specified in subsections (A)(1) through (A)(4) respectively as: the operator was arrested; the owner/operator was not present; the owner/operator could not be located; and the owner/operator was unable to take control of the property. Inventory Policy § VI(A). The policy also contained section VII(A), entitled “Towing of Vehicles as Incident to Arrest.” Inventory Policy § VII(A). That section began, “[i]n the event a deputy is required to tow a vehicle that has been driven or used by an individual who has been arrested \*\*\*.” Inventory Policy § VII(A). The remainder of that section provided various procedures to be followed when conducting such an inventory.

¶ 13 The trial court found that Coomer was credible and that the reason he towed the vehicle was that he believed that the inventory policy required that a vehicle, whose driver was arrested for DUI or driving with a suspended license, be towed. The court found that defendant asked Coomer to call the vehicle’s owner, but that Coomer did not do so until after the vehicle had been towed. The court further found that the vehicle was legally parked, that it did not impede traffic, and that it was not a threat to public safety. The court found that the only basis for the tow, other than the nature of the offense, was that it would be left unattended. The court noted that there was no indication that the vehicle was uninsured. The court ruled that, because the tow was unlawful, the inventory search was necessarily unlawful. Thus, it granted the motion to

suppress the evidence found in the vehicle. The State filed a certificate of impairment and a timely notice of appeal. See Ill. S. Ct. R. 604(a)(1) (eff. Feb. 6, 2013).

¶ 14

## II. ANALYSIS

¶ 15 A defendant has the burden of proof on a motion to suppress evidence. 725 ILCS 5/114-12(b) (West 2012); *People v. Lampitok*, 207 Ill. 2d 231, 239 (2003). If the defendant establishes a *prima facie* case that the search was illegal, the State must counter with its own evidence. *Lampitok*, 207 Ill. 2d at 239.

¶ 16 This court applies a two-part standard of review to a trial court's ruling on a motion to suppress. *People v. Cosby*, 231 Ill. 2d 262, 271 (2008). The factual findings are entitled to great deference, and we will reverse them only if they are against the manifest weight of the evidence. *Id.* at 271. A reviewing court remains free, however, to assess the facts in relation to the issues, and it reviews *de novo* the ultimate legal ruling as to whether suppression was warranted. *Id.*

¶ 17 The fourth amendment applies to both seizures and searches. *People v. Nash*, 409 Ill. App. 3d 342, 347 (2011) (citing *Soldal v. Cook County, Illinois*, 506 U.S. 56, 63 (1992)). In the context of an inventory of a vehicle, the impoundment of the vehicle constitutes a seizure, and the inventory is a search. *Nash*, 409 Ill. App. 3d at 347. That being the case, three criteria must be satisfied to have a valid inventory of a vehicle under the fourth amendment: (1) the impoundment must be lawful; (2) the purpose of the inventory itself must be to protect the owner's property, to protect the police from claims related to the property, and to protect the police from danger; and (3) the inventory must be conducted pursuant to a reasonable, standardized policy and not be a pretext for an investigatory search. *Id.* at 348.

¶ 18 The threshold issue in considering whether an inventory search pursuant to a tow of a vehicle was valid is whether the impoundment was proper. *Id.* To be valid, an impoundment

must either be supported by probable cause or be for purposes of community caretaking. *Id.* at 347 (citing *South Dakota v. Opperman*, 428 U.S. 364, 370 n.5 (1976)). Pursuant to the community-caretaking justification, the police are authorized to seize, and remove from the streets, any vehicle that impedes traffic or threatens public safety and convenience. *Nash*, 409 Ill. App. 3d at 348. That includes disabled or damaged vehicles, as well as those that jeopardize both public safety and the efficient movement of vehicular traffic by being parked illegally. *Id.* at 348; *People v. Mason*, 403 Ill. App. 3d 1048, 1054 (2010). On the other hand, an unattended but legally parked vehicle does not alone warrant impoundment. *People v. Clark*, 394 Ill. App. 3d 344, 348 (2009).

¶ 19 In this case, the evidence established that the vehicle was parked legally, did not impede vehicular traffic, and did not otherwise create a public safety hazard. Additionally, it was parked in a lighted, residential neighborhood. It would have been merely left unattended had it not been towed. Thus, the impoundment was not justified by the community-caretaking rationale.

¶ 20 The State does not contend that the impoundment was supported by probable cause. Nor is there any hint in the record that there was probable cause to seize the vehicle. Therefore, the impoundment cannot be justified on that basis.

¶ 21 Coomer testified that the inventory policy, particularly section VI(A), required him to have the vehicle towed. However, an inventory policy cannot by itself validate an otherwise unlawful impoundment. See *Nash*, 409 Ill. App. 3d at 354 (recognizing that adherence to an impoundment policy does not alone make an impoundment reasonable under the fourth amendment); see also 3 Wayne R. LaFare, *Search and Seizure* § 7.4(a), at 646-47 (4th ed. 2004) (unconstitutional searches cannot be constitutionalized by standardizing them as part of a routine policy). Therefore, reliance on a standardized inventory policy, although necessary under the

fourth amendment (see *Nash*, 409 Ill. App. 3d at 348), does not alone justify an impoundment. Thus, even assuming that he complied with it, the inventory policy relied upon by Coomer did not justify the impoundment under the facts of this case.

¶ 22

### III. CONCLUSION

¶ 23 For the reasons stated, we affirm the order of the Winnebago County circuit court granting defendant's motion to suppress evidence.

¶ 24 Affirmed.